

Planning & Zoning Commission Meeting  
Minutes of October 3, 2012  
1st Floor North Conference Room - City Hall

**Present:** Chairman Nathaniel Cannady, Vice-Chairman Jeremy Goldstein, Kristy Carter, Jane Gianvito Mathews, Joe Minicozzi, Holly P. Shriner and Paul Smith (recused at 5:48 p.m.)

**Absent:** None

**Pre-Meeting - 4:30 p.m.**

At the Pre-meeting (1) it was announced that the City received an award for Lexington Avenue as a "Great Street" from the North Carolina Chapter of the American Planning Association at their conference in Wilmington. Mr. Minicozzi prepared the application on behalf of the Downtown Association, and made a presentation about the nomination at the conference. Director of Planning & Zoning Judy Daniel announced that the Conference would be in Winston-Salem next year and expressed hope that some of the Commissioners would attend; (2) there was a discussion of the process and procedures for the two Level II agenda items; and (3) it was the consensus of the Commission to appoint Ms. Carter as the Planning & Zoning Commission representative to the Soil Erosion/Stormwater Review Committee.

**Regular Meeting - 5:00 p.m.**

Chairman Cannady called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- ? Mr. Minicozzi moved to approve the minutes of the September 5, 2012, meeting. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.
- ? It was the consensus of the Commission to continue the conditional zoning request for the project identified as Leasing and Equipment Sales Company Inc. to November 7, 2012.

**Agenda Items**

- (1) **Downtown project variances - The project identified as Green Man Brewing Company at 27 Buxton Avenue is seeking variances from development standards found in 7-8-18 of the UDO pertaining to a proposed addition to an existing building. The property is identified in the Buncombe County tax records as PIN 9648-38-8099.**

City Attorney Oast explained the procedures for this item which requires the Commission to act as a Board of Adjustment and all testimony needs to be sworn. Ms. Carter and Mr. Smith would participate only in this matter as Alternates and both left the dais.

City Clerk Magdalen Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast asked if any Commissioner had any special knowledge associated with this project that they disclose it at this time. No one spoke.

Urban Planner Alan Glines oriented the Commission to the site location and said the applicant is requesting two (2) variances pertaining to the addition to an existing building in the Central Business District (CBD):

- ? Section 7-8-18(f)(5)(b) "Maximum setback: Zero feet from the right-of-way line. The addition to the existing building will be setback 35 feet from the property line; and
- ? Section 7-8-18(f)(7) which states that 'the minimum height for new structures in the Central Business District will be two stories.' Like the existing building, the building addition is one-story.

Green Man Brewing operates in an existing one-story building at 23 Buxton Avenue. The applicant is expanding in the building next door at 27 Buxton which includes renovating it and providing a small addition to provide a storage area and boiler room in the new building. The addition area to 27 Buxton is also one-story and is substantially smaller than the existing footprint and subordinate to the main building in design, and accessory in function. The main part of the existing building is setback 35 feet and the addition is placed along the side of it.

The design (scale, setback, height, orientation) of the addition are tied to the existing building and reflect its features. The site is located in the Central Business District (CBD). This project is considered a Level I review pursuant to Section 7-5-9.1 of the UDO, but requires approval of these two variances.

Other Considerations:

- ✍ The total building size is proposed to be 3,630 s.f. (including the 330 s.f. addition) and this project is considered a Level I, pursuant to Section 7-5-9.1 of the UDO.
- ✍ Per the review process in Section 7-5-9.1(b)(10), the Downtown Commission will provide a recommendation on all variance requests considered by the Planning & Zoning Commission. On September 14, 2011, the Downtown Commission reviewed the variance requests and voted to recommend approval on a vote of 9-0.
- ✍ Since both variance requests are tied to the building addition they will be described together for the review of the findings.
- ✍ The expansion is existing at this time and during the construction process, the addition was recognized as not meeting downtown standards for new construction. This hearing by the Planning and Zoning Commission is part of reconciling the situation for the applicant and the City.

**FINDINGS:**

***Conclusion 1 - There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.***

Test 1 - If made to comply with the provisions of the ordinance, the property owner cannot make reasonable use of the property.

Older commercial structures often have to be adapted in order to be usable for a new business venture. Part of this adaptation may include renovation and additions when there is insufficient space for the proposed new activity within the existing building. The comprehensive plan of the City encourages the adaptive reuse of older structures, especially historic structures because it protects the character of the community and is a sustainable practice. The existing building is non-conforming to both setback and height standards and is a 'grandfathered' building.

When changes to the UDO were adopted based on the *Downtown Master Plan* there was no provision made for additions to existing buildings. The proposed storage area and boiler room will not physically fit into the existing structure without the addition, and a two-story addition would be impractical for these uses. Similarly, a 0' setback would also be impractical for the addition because it would block other deliveries needed for the brewery.

Without the requested variances, this building is more difficult to adaptively reuse and the limited space could diminish the success of the brewery expansion.

Test 2 - The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

The existing building is a single-story structure and was built in the mid-1950's with a large setback. Most of the buildings in this section of downtown are also single-story structures, many with zero foot setbacks and when they were built the area had more industrial uses. This building pattern is different from the traditional downtown core identified by taller structures built to the edge of the sidewalk. Due to a natural growth pattern radiating from the downtown core, this area of Asheville's downtown (sometimes called the South Slope) is being redeveloped using the older single story structures that are more challenged in meeting downtown development standards.

Test 3 - The hardship is not the result of the applicant's own actions.

The existing one-story building was built in the 1950's and was set back from the street to allow for delivery and loading into the building. The addition does not stand-alone and is tied to the existing structure whose design is not the result of the applicant's own actions.

***Conclusion 2 - The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.***

Re-use and renovation of historic buildings is a goal of the *Downtown Master Plan*, the adopted sustainability policy, and the downtown design guidelines. The project proposes to retain the existing building for the expanded commercial brewery use which with the building addition will meet their needs and provide for the extended life of the structure. The addition and renovation is in scale with the setback and height of the existing building and therefore is in harmony with the ordinance and with the established character of the area.

***Conclusion 3 - The granting of the variance secures the public safety and welfare and does substantial justice.***

The requested variances to height and setback will not compromise public safety or welfare in any way, nor does it impact another property owner's use of their property. A building addition is a reasonable expectation to the reuse of an existing structure, and by granting the variances in order to support other goals substantial justice is assured.

Staff recommends approval of the requested variances to allow the proposed one-story addition. These variances include: (1) Allowing a one-story addition (where two-stories are normally required for new construction); and (2) Extending the setback to 35 feet for the addition.

Staff finds this request to be reasonable and support the goals of downtown and other City adopted plans.

Chairman Cannady opened the public hearing at 5:14 p.m. and when no one spoke, he closed the hearing at 5:14 p.m.

Based on the above findings and the analysis provided in the report, Mr. Minicozzi moved to recommend approval of the requested variance to allow a one-story addition (where two-stories are normally required for new construction). This motion was seconded by Vice-Chairman Goldstein and carried unanimously by a 5-0 vote.

Based on the above findings and the analysis provided in the report, Ms. Shriner moved to recommend approval of the requested variance to extend the setback to 35 feet for the addition. This motion was seconded by Vice-Chairman Goldstein and carried unanimously by a 5-0 vote.

Ms. Carter and Mr. Smith then took their seats at the dais and resumed participation in the meeting.

- (2) Review of Level II site plan for the project identified as Givens Estates-Creekside Homes Phase I located at 21 Wesley Drive. The project propose s to demolish two existing buildings and replace with two new buildings containing 24 total units. The property owner is Givens Estates and the contact is William Lapsley. The property is identified in the Buncombe County Tax records as PIN 9655-57-2108.**

City Attorney Oast said that this is a Level II review and in this capacity the Commission acts in a role that they have not been acting in until the Code of Ordinances was amended about one year ago. The Commission normally acts in either a legislative advisory capacity or in a quasi-judicial capacity. In this role, the Commission is acting in a ministerial capacity. Level II reviews used to be conducted at the Technical Review Committee (TRC) level and that was where the final review occurred. Last year the Code was amended to shift those reviews to the Planning & Zoning Commission. That does not make the Commission technical experts but it is an extra layer of review on the TRC's findings and determinations. The Commission's review is for matters of technical compliance only with the development codes. There is not a room for subjective evaluation of matters of compliance.

Urban Planner Julia Fields oriented the Commission to the site location and said that this project site is a .9 acre section of the 134.3 acre campus of Givens Estates. The project site is located at 20 and 21 Wesley Drive (Creekside Apartments). Wesley Drive is accessed off of Sweeten Creek Road. The entire campus is located on four different parcels. The project site is located on PIN 9655.57-2108. The project is located within the City's steep slope area; however, as there is no increase in the area of disturbance, there are not steep slope regulations issues for this review. The zoning for this section of the campus is RM-16 (Residential Multi-Family High Density District).

The applicant, Givens Estates, is requesting review of site plans proposing to replace two existing residential buildings containing seventeen units with two new buildings containing twenty-four units (increase of 7 units). This is the first phase of a multi-phase project to replace the structures in the Creekside Home section of Givens Estates. The project is being reviewed as a Level II application, however, as subsequent phases occur, a Level III review will be required.

The proposed height of the new buildings is less than the maximum of 40 feet in RM-16 and the structures will be served with existing (private system on the campus) water and sewer lines. Twenty-four underground parking spaces are provided. There is additional surface parking along Wesley Drive that will remain. Proposed landscaping greatly exceeds what is required by the City.

Pros:

- ? Provides for updating of existing residential structures in the same location as existing structures and with slightly increased density.
- ? Proposed landscaping exceeds requirements.

Con:

- ? None noted.

Staff recommends approval subject to the conditions listed in the TRC Report and the standard conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards.

In response to Mr. Minicozzi, Ms. Fields explained that staff will do the comprehensive analyze for density, overall grading, hillside, impervious, etc. at the next level. We will put this .9 acres in the mix of the larger parcel when they analyze the entire complex. The density on that entire larger parcel will be compliant.

Chairman Cannady opened the public hearing at 5:30 p.m. and when no one spoke, he closed the public hearing at 5:30 p.m.

Based on the above findings and the analysis provided in the report, Mr. Minicozzi moved to recommend approval of the site plan for the project identified as Givens Estates-Creekside Homes Phase II located at 21 Wesley Drive to proposes to demolish two existing buildings and replace with two new buildings containing 24 total units, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The subsequent phase of the project may not exceed the density for the entire parcel. This motion was seconded by Vice-Chairman Goldstein and carried unanimously by a 7-0 vote.

- (3) Request for a Conditional Zoning from for the project identified as New Classical Academy located at 671 Sand Hill Road from RM-6 to Institutional to allow the conversion of an existing church into a private school. Modifications to the landscape standards in Article 11 of the UDO are also requested. The owner is Mountain Movers Ministries, Inc/Edward Lynn Hall, President and the contact is Clay Mooney with Design Associates. The property is identified in the Buncombe County tax records as PIN 9627-59-0175.**

Urban Planner Alan Glines oriented the Commission to the site location and said that the proposal is to establish a private school in an existing church structure. The New Classical Academy is operating in Weaverville at this time and is proposing to relocate to this site for their 40 students in grades K-8. The site currently has a church building totaling about 3,400 square

feet on two levels. The building will be modified to meet building code standards for school uses while maintaining some capacity for operation of the church.

The site is a 1.91 acre parcel that slopes up gently from Sand Hill Road. There is an existing driveway shared with a residential community of 46 homes behind the lot. Although schools are allowed under the existing residential zoning of RM-6, the minimum lot size is 2 acres. The location along Sand Hill Road is good for a school use from an access standpoint and there appears to be ample room to provide for parking needs and outdoor play space.

The school currently has an enrollment of 40 students and would like to eventually grow to a maximum of 60 students. The site is expected to be able to accommodate this future increase because the existing parking area is ample and could be expanded if necessary. The traffic demands from future growth could also be managed using the existing driveway. If the school should grow beyond 60 students, then a traffic management plan will be required to be submitted for analysis by appropriate City staff.

The project is seeking approval for a modification from usual buffer plantings along the east side of the property. There is insufficient space along the edge of the existing driveway and the property line to buffer the residences on that side. Staff is supportive of this request because it is an existing driveway that serves several uses. The school use is generally compatible with residential uses and the existing residential uses already have some landscape material planted along the property edge that provide screening.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed school activity is not expected to endanger public health or safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site development is existing and the site is gently sloping up from Sand Hill Road. The building is also existing will receive renovations to allow the school use.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** A school is compatible with the character of the neighborhood and is not expected to injure the value of neighboring properties.
4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The church building is existing and the school will operate within this structure. While the building is larger than some of the homes in the community, it is in-scale with the general development pattern of the neighborhood.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is an adaptive use of an existing building and meets city adopted goals of sustainability and higher density development where infrastructure is in place to support the development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Sand Hill Road is a collector street in the west area of Asheville and can handle the traffic volumes. All of the utility and safety related infrastructure is sufficiently present in or serves this area.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposal has been reviewed for traffic safety concerns which can be safely handled by Sand Hill Road.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because it meets City adopted goals for adaptive reuse of existing properties where infrastructure is suitable.

Pros:

- An existing building will be more fully utilized
- The property is positioned for convenient access to transportation systems
- The proposed use is compatible in a neighborhood setting

Con:

- The existing site configuration limits the ability to fully comply with standard landscape buffers for a portion of the site

Staff recommends that the application be approved with the conditions outlined in the staff report and the Technical Review Committee report because the use is appropriate to that site and to the neighborhood in which it is located.

When Chairman Cannady was concerned about traffic, since some other buildings share the driveway, Mr. Glines said that accessibility was looked at by the Transportation Department and they saw no concerns. If there is some traffic congestion, it would be for a very limited concentration of time.

In response to Mr. Minicozzi, Mr. Glines said that this is being reviewed as conditional zoning and not a USSR. Mr. Glines said that USSR standards for a school in a residential district has to be 2 acres and this is not. In addition, there is a buffer requirement.

Chairman Cannady opened the public hearing at 5:37 p.m. and when no one spoke, he closed the public hearing at 5:37 p.m.

When Mr. Minicozzi asked if there would be fencing for a play area, Mr. Clay Mooney, representing the applicant, said that there has not been any specific discussion regarding any enclosed playground area. However, safety is the utmost importance for schools. Planning & Development Director Judy Daniel also noted that schools are regulated by the state.

Based on the above findings and the analysis provided in the report, Vice-Chairman Goldstein moved to recommend approval for the Conditional Zoning from for the project identified as New Classical Academy located at 671 Sand Hill Road from RM-6 to Institutional to allow the conversion of an existing church into a private school, and approval of the buffer line modifications to the landscape standards in Article 11 of the UDO noted on the plan, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) Any changes to the existing building size or orientation be reviewed for compatibility with the approved plans; and (5) Should the school grow beyond 60

students, the school administrator will submit a traffic management plan for analysis by the appropriate City departments. This motion was seconded by Mr. Smith and carried unanimously by a 7-0 vote.

- (4) Review of Level II site plan for the project identified as Caledonia Apartments located at 77 Finalee Avenue. The project proposes construction of a 50 unit apartment building. The property owner is Caledonia, LLC and the contact is Bryan Moffitt. The property is identified in the Buncombe County Tax records as PIN 9648-61-9483.**

City Attorney Oast said that this is a Level II review and in this capacity the Commission acts in a role that they have not been acting in until the Code of Ordinances was amended about one year ago. The Commission normally acts in either a legislative advisory capacity or in a quasi-judicial capacity. In this role, the Commission is acting in a ministerial capacity. Level II reviews used to be conducted at the Technical Review Committee (TRC) level and that was where the final review occurred. Last year the Code was amended to shift those reviews to the Planning & Zoning Commission. That does not make the Commission technical experts but it is an extra layer of review on the TRC's findings and determinations. The Commission's review is for matters of technical compliance only with the development codes. There is not a room for subjective evaluation of matters of compliance.

City Attorney Oast said that Ms. Patsy Brison, attorney representing the Kenilworth Residents Association (KRA), would be raising a procedural questions regarding Mr. Smith's participation in this matter. He said that Mr. Smith had previously appeared at a City Council meeting and expressed an opinion regarding a previous version of this project, which Ms. Brison indicates bias. He has talked to Mr. Smith and even though this is neither a legislative nor a quasi-judicial process, it is a process in which the Commissioners are expected to be unbiased. It was his recommendation that Mr. Smith recuse himself.

Mr. Smith said that he has nothing to do with this project and is not concerned about the outcome of the project. His comment to City Council was about a procedural error on a zoning change. He spoke as a citizen of Asheville and not as a Planning & Zoning Commission member. However, he would recuse himself. He was concerned that citizens who serve on boards give up their rights to speak on matters in which they are concerned.

Mr. Tom Holman, attorney representing Caledonia LLC, said that he recalled that Mr. Smith may have spoken to City Council regarding possible rezoning a portion of the property; however, he did not believe Mr. Smith spoke to City Council on either the prior project or this project.

Ms. Brison said it is her request to have Mr. Smith recused from participating in this matter. She said that Mr. Smith did speak publicly at a public hearing regarding this matter. She could not recall if it was a map amendment or a text amendment, but he spoke about this project. She said he spoke in a way that was favorable toward this project and believes that constitutes a preconceived type of opinion and a bias.

At 5:48 p.m., Mr. Smith recused himself and left for the remainder of the meeting.

Ms. Brison provided the Commissioners with a letter dated October 3, 2012, with attachments. In summary, (1) there is a pending lawsuit regarding subdivision on property on which this proposed project is to be located and they are not waiving any allegations and contentions regarding that matter; (2) they would like to incorporate their objections regarding a previous application for a 50 unit apartment building by Caledonia LLC; (3) procedural objection for failure to follow the requirements for submission to the TRC (site plan must be complete before the TRC can consider the matter); (4) procedural objection that the Commission may only schedule a public hearing after receipt of the site plan and the recommendations of the TRC (neither the



recommendation of the TRC nor the site plan was received by the Commission prior to the scheduling of the public hearing for October 3, 2012); (5) view that the notice sent to the people within 200 feet of the project was inadequate because it did not include the TRC report; (6) objection that the geotechnical analysis provided was for a different project in the same area; and (7) applicant has not shown that the project can meet AASHTO standards for the required site distances and the application should not have been considered by TRC without that proof. She requested that this matter be remanded to TRC for a complete site plan and that the Commission can have a complete site plan and TRC report before scheduling a public hearing.

City Attorney Oast said that the recommendations are received by the Director of Planning & Development who acts as the Secretary to the Commission. The Director did receive those recommendations from the TRC meeting of September 17 and he felt it was appropriate to proceed with the hearing. In addition, the recommendations have been included with the staff report sent to the Commissioners.

Chairman Cannady wondered if they have a complete TRC report since there were several questions and requests for clarifications in the TRC report. Urban Planner Jessica Bernstein said that when the individual departments review the plan and identify those minor clarifications or issues that may need to be further resolved, the departments feel it can be approved with those items be resolved before final zoning approval. That is the standard that all of projects follow. Assistant Planning & Development Director Shannon Tuch also explained that if any of the clarifications are anything that City staff thinks is substantial or something that they are concerned that the developer may be challenged to be able to meet or if it is a standard that could have a ripple effect, then staff does not move the project forward until we see those clarifications. When we don't have any concern that the applicant has the ability to make those clarifications, then we give them the opportunity to move forward and not delay them unnecessarily.

City Attorney Oast felt it was appropriate for the Commissioners to proceed with the public hearing.

In response to Ms. Shriner, Ms. Tuch said that because City staff treats all projects of a similar nature, this is as complete an application as we get and it does meet the City's standards.

In response to Ms. Mathews, Ms. Tuch said that the City has received a geotechnical analysis.

In reply to Mr. Minicozzi regarding AASHTO standards, Ms. Bernstein said that the City's Traffic Engineer will address the stopping site distances from information from Mattern & Craig.

In response to Ms. Shriner, City Attorney Oast said that the meeting agenda sent to the property owners meets all notice requirements.

Chairman Cannady wondered if the Commission would like to postpone this matter until the next meeting to make sure that any concerns expressed have been researched. Ms. Tuch noted that if the matter is continued, she wouldn't do anything differently than has already been done. After a brief discussion, it was the consensus of the Commission to proceed with the hearing.

Urban Planner Jessica Bernstein oriented the Commission to the site location and said the applicant is requesting review of site plans for the construction of a 50-unit multi-family residential building. This project is considered a Level II review pursuant to Sections 7-5-9(b)(1)a. of the UDO. A zoning permit was issued for a similar Level II site plan on this parcel in 2011, which is invalidated by this current proposal.

This project is considered a Level II review and according to Section 7-5-9(b) of the UDO, the Planning & Zoning Commission shall review Level II projects-conceptual site plans for compliance with applicable standards and regulations.

The project site consists of a 3.17 acre parcel located at 77 Finalee Avenue. This parcel was created via minor subdivision and recorded on November 23, 2010. This undeveloped parcel is zoned Institutional and adjacent zoning includes RS-8 to the north and west (single and multi-family homes), and Institutional to east and south (Kenilworth Inn Apartments and vacant/undeveloped). The parcel is located at the southern boundary of the Kenilworth neighborhood.

The applicant is proposing to construct a single building containing 50 units for a residential density of approximately 16 units per acre (the maximum permitted in this zoning district). There is a mix of units proposed (21 1-bedrooms; 19 2-bedrooms and 10 3-bedrooms) and the building has a gross floor area of 74,733 square feet.

Building height is measured from the point of emergency access (Finalee Avenue) to the ceiling of the highest occupied floor, which results in a measurement of 19'6". The roof peak is not considered in calculating building height. The structure contains five levels of living space when viewed from the rear side.

There is one vehicular access point proposed via a 24' wide driveway from Finalee Avenue into the parking area, where there is a mix of covered and uncovered parking for a total of 75 parking spaces, including 4 accessible spaces and bike parking. Eleven of the spaces are designated as "compact," which will have to be approved by the Transportation Department but should be acceptable since these alternative spaces would be in excess of the minimum number required by the UDO. Plans indicate a pedestrian pathway from the western side of the building to the street and to a 5' sidewalk along Finalee.

Landscaping is required on the site and includes street trees along Finalee, building impact landscaping, street buffer, parking lot landscaping and a Type 'B' property line buffer along the RS-8 zoned parcel adjacent to the west. Thirty percent of the site (0.95 acres) is dedicated as tree save area.

Open Space standards require that 15% of the lot area be designated (0.48 acres or around 21,000 SF) and the code also stipulates that land exceeding a 25% grade can only be counted for 50% of the requirement. Plans appear indicate sufficient open space, with approximately 13,933 SF under 25% grade and 19,063 SF above 25% (23,433 SF as "countable" open space).

The project was reviewed by the Technical Review Committee on September 17, 2012, and approved with conditions. This proposal either meets all technical standards as required by the City or appears to have the ability to comply through minor revisions and clarifications, with variances and modifications receiving review by the appropriate boards and commissions. Based on this, staff recommends approval of the site plan and proposed development subject to the following conditions of the TRC:

**PLANNING:**

**Staff Recommendation: Approve with Conditions**

1. There appears to be a discrepancy regarding open space. The plans show the pool/patio area as 1,039 SF but the calculations indicate this area as having 5,831 SF. Please clarify. Also – please note that areas over 25% grade can only be used towards 50% of the open space requirement. Please revise open space calculations to reflect this stipulation.
2. Please provide square footage for the building footprint in the Development Data Block.
3. Address on title page and on title block of all plan pages says 60 Caledonia. Please revise to 77 Finalee.

4. Retaining walls exceeding 8' in height have additional aesthetic requirements, per Section 7-10-5 of the UDO. Please provide details on compliance. Additionally, there appears to be one location where the site retaining wall is 20' which requires landscaping. Please provide details and calculations on landscape plan page.
5. Please submit a cut sheet for approval on the proposed retaining wall type.
6. There is a discrepancy between plan pages regarding the total impervious area. The site plan and landscape page indicates 33% whereas the grading plan indicates 35%. Please clarify.
7. Please show water and sewer lines and easements on landscape plan to verify there are no conflicts.
8. Please provide detail on dumpster screening to verify compliance.
9. Calculations and species for tree save area planting are needed on landscape plan.
10. Some of the shrubs located within the property line buffer appear to be labeled for street buffer – is this an error? If not, number of shrubs provided for the property line buffer is insufficient.
11. Although the number of trees required for building impact landscaping is satisfied with existing tree credits, all required shrubs must be included on the plan.
12. Please indicate extent of grading on landscape plan. Also, grading plan seems to indicate that there will be grading activity on an adjacent parcel – is this correct?

**TREE COMMISSION:**

***Recommendation:***

1. No comments received as of Sept. 13th

**TRANSPORTATION AND ENGINEERING: Traffic- Jeff Moore – 232-4586**

***Staff Recommendation: Approve with Conditions***

1. A Traffic Impact Study is not required because the anticipated traffic at full build-out conditions is less than 100 vehicles per hour during the peak hour.
2. Verify that appropriate stopping sight distance, based on AASHTO standards, is provided at the public access point onto Finalee Avenue.
3. In addition to the proposed 5 foot sidewalk that is shown on the south side of Finalee Avenue, Curb and Gutter is required to be installed to meet current standards.
4. Show bicycle rack details on plans.

**PARKS AND RECREATION: Al Kopf – 259-5838**

1. No comments

**BUILDING INSPECTIONS: Mark Matheny – 259-5667:**

***Staff Recommendation: Approve with Conditions***

1. New buildings and modifications to existing buildings will require a building permit.
2. Compliance with the NC Building Code will be reviewed during Building permit application process.
3. All required exits to provide accessible path to public way or safe dispersal area.
4. Indicate on drawings route to public way from east stair.
5. Accessible slopes and cross slopes to be maintained along the accessible paths and to the public way.
6. Exterior Bldg lighting to meet lighting ordinance standards
7. Section 1107.6.2.1.1 requires 5% of total units to be Type A. This calculates to 2.5. Indicate 3 Type A units are required and provided on the Appendix B.

**EMERGENCY ADDRESSES: Stuart Rohrbaugh: 251-4004**

No comments

**FIRE DEPARTMENT: Jeff Payne; 259-5441**

**Staff Recommendation: Approved with Conditions**

1. The existing fire line relocation shall be permitted, inspected and in service before construction of this project begins.
2. FDC shall not be located or obstructed by the fenced dog area.
3. The proposed "Storm Tech System" in the access road/parking area shall be designed to withstand an impact load of 75,000lbs.

**WATER RESOURCES: Mike Brookshire – 259-5961**

**Staff Recommendation: Approve with Conditions**

1. Plans for the proposed water service will need to be submitted to Water Engineering for review, approval and permitting.

**PUBLIC WORKS: Richard Grant – 259-5863**

**Staff Recommendation**

1. No comments received as of Sept. 13th

**Stormwater/ Erosion Control/ Flood Info: Ray Tracy – 259-5404**

**Staff Recommendation: Approved with Conditions**

1. Specific comments are not covered under this zoning review, covered under separate permit review. Separate grading and stormwater permits will be required. The grading and stormwater permits have been applied for. Any revisions or resubmittals are to be submitted to the Planning Department per the instructions at the end of this letter.
2. Provide a table with complete impervious area information in square feet, including the pre- and post-development pervious and impervious areas and percentages of pre- and post-development impervious areas. Areas should reflect pervious and impervious areas for the whole parcel.
3. Quality and quantity stormwater management will be required for this project in accordance with Section 7-12-2 of the City of Asheville Unified Development Ordinance.
4. All stormwater BMP's must comply with the requirements of the City of Asheville Unified Development Ordinance, Section 7-12-2, the City of Asheville Standard Specifications and Details Manual and the NCDENR Stormwater BMP Manual unless otherwise approved by the Stormwater Administrator.
5. A pre-construction conference will be required for this project. The conference will be scheduled after all City departments have completed their review, and after any required Grading, Stormwater and Flood Permits have been approved.

**MSD: Kevin Johnson – 225-8289**

**Recommendation: Approve with Conditions**

1. A sewage flow allocation has been issued for this project. A sewer extension is required. Plans for the extension must be submitted and approved by MSD.
2. Building permits for this project will not be released until a sewer extension permit has been issued and sewer service application(s) have been submitted with facility fees.

When Ms. Mathews asked how staff computed the open space since there is no grading plan, Ms. Bernstein said that staff relies on the applicant's design professionals to provide that information.

There was considerable discussion, initiated by Vice-Chairman Goldstein, regarding traffic. Mr. Jeff Moore, City's Traffic Engineer, said that a Traffic Impact Study (TIA) is not required since the project is 50 units. Mr. Moore said the trigger point to require a TIA is 100 trips in the peak hour, whether a.m. or p.m. The 50 units do not generate that much traffic. Based on the trip generation standards that are nationally accepted, the a.m. peak (between 7-9 a.m.) should generate 28 trips (6 entering and 23 existing); and the p.m. peak (4-6 p.m.) should generate 45 trips (29 entering and 16 exiting). Based on that information, the highest peak hour

is 45 and that does not trigger the need for the TIA. The roadway would be able to handle that traffic.

Ms. Carter confirmed with City Attorney Oast that the Commission cannot add conditions to a Level II project.

There was a brief discussion, initiated by Mr. Minicozzi, regarding how much more density in that area would trip a study of the intersection of Caledonia and Swannanoa River Road; and at what point can the Commission look ahead at the traffic capacity in that area. Ms. Bernstein said that if there are subsequent projects by the same developer then staff could consider those developments cumulatively and that would be a trigger for a TIA. Ms. Tuch also said that the acreage of the site limits the density. She said that if there were subsequent projects that did require a TIA, then all of the surrounding development gets taken into consideration. There are opportunities to look at the area holistically.

Mr. Bryan Moffitt, representing the applicant, said that this is a new project and they did submit a grading plan. He said their application submitted was complete and there were a few TRC comments raised which they have already addressed with additional information. One item was the stopping distance. There was a 2011 report by Mattern & Craig on the stopping distance for the access point. One of the recommendations they made for the prior project was for the entry point being moved up Finalee. The new project design moved the entry point and it meets that recommendation of that report. They are within the stopping distance required by AASHTO. They have also submitted a geotechnical report.

Mr. Bryan Moffitt, representing the applicant, said that this is a new project and responded to various questions/comments from Ms. Mathews, some being, but are not limited to: why does the site plan says 2.4 acres are disturbed but it looks like there is a lot less shown on the plan; why aren't the over 30 foot retaining walls noted on the plan; is there a maximum wall height; and what is the top of the retaining walls.

Ms. Tuch said that disturbance is not necessarily the same as grading. In order to grade you have to change the contours. You can have disturbed area that doesn't necessarily change the contour of the land. This plan has been reviewed by City staff who are licensed Professional Engineers and are accustomed to reviewing plans like this. This is something that they do all day. They will also receive a more detailed plan later that shows some of the fine grading. They will cross-reference that to make sure they don't exceed any permissible grading limits.

Mr. Holman said that this is a ministerial review on whether or not the technical requirements for this plan are satisfied. This project should be treated as any other project that is before the Commission as a Level II project. In 2010, there was a 100-unit project approved by the TRC and unanimously approved by the Planning & Zoning Commission. However, that project was rejected by City Council, but not for any technical review compliance issues. Mr. Howington proposed another project at this location for 50 units a year ago, but he did not move forward because he felt that substantial improvements could be made to the project. He brought in another architect to make the project better for the neighborhood, better for the future residents and better for the City. That is reflected by fewer comments from City staff, fewer comments and conditions by the TRC and by the candid acknowledgement by the KRA that this project was "much improved over the prior plans that were also improved." The technical requirements have been satisfied by TRC and we appreciate your consideration to approve the project. He asked that he be allowed some time at the end of the hearing for rebuttal.

At 6:37 p.m., Chairman Cannady opened the public hearing.

Ms. Brison asked that the letter dated October 3, 2012, which she presented to the Commissioners earlier in the meeting be incorporated into the record. She reiterated that they are not waiving anything by their appearance at this meeting. She challenged the staff's

interpretation of the transitional area as they believe this is within 100 feet and also that there is a height requirement for this project. She also challenged the interpretation of the primary fire department access. She said there has been no evidence of compliance regarding maneuvering of garbage trucks in and out of where the dumpster location is. There is no T-turnaround for fire trucks or other delivery or service vehicles. She still contends this is an incomplete application with regard to the old 2010 Mattern & Craig study. That study was for 2 50-unit buildings in a different location. She contends that they have not shown compliance with AASHTO standards. She said the geotechnical analysis is also dated and the borings are not in the same location as the building. She asked that she be allowed some time at the end of the hearing for rebuttal.

The following individuals spoke against the 50-unit apartment complex for various reasons (many mentioned by their attorney Ms. Brison). Some concerns are, but are not limited to: since this is a new project, prior water commitment letters, geotechnical analysis and Mattern & Craig study should not be used; steep slope issues; two points of access should be provided for the project; is there adequate water availability and pressure for firefighting; concern that the accumulation of traffic in the area from proposed projects is not requiring a TIA; concern of stopping site distance and intersection site distance; no room for overflow parking; Caledonia Road is a 16-foot wide road; this much density in the area is not what a single-family neighborhood needs; additional cars from project on windy, narrow roads are dangerous; entry/exit location is in a bad location; property should be rezoned from Institutional to residential; heavy equipment during construction will have serious impacts on the mountainside; need for two entry/exit points; and no sidewalks in the area.

Ms. Tracey Stebbing, resident on Finalee Avenue  
Mr. Terry Meek, resident on Pickwick Road  
Ms. Miller Graves, resident on Caledonia Road  
Ms. Valerie Hoh, resident on Finalee Avenue  
Ms. Mary Evers, resident on Finalee Avenue

Ms. Tuch addressed the various questions/comments/concerns voiced by those opposing the development, some being, but are not limited to: (1) if the building is not more than 100 feet from the nearest residential area, the transition zone is 40 feet and the height of the building is 19.6 feet; (2) the Fire Department verified the point of entry – from the parking lot through the main doors; (3) one of the sheets provided to the Commissioners show turning movements for larger vehicles; (4) staff reviewed both the geotechnical analysis and Mattern & Craig study and felt there was not enough significant change to require additional reports; however, they will contact those professionals and ask them to submit a letter stating that the information in the report is still valid, based on the new project; (5) the location of the geotechnical borings are located in the report; (6) this property is not subject to the steep slope development standards; (7) questions regarding traffic will be responded to by the City's Traffic Engineer; (8) the project meets the minimum number of parking requirements; (9) the history of the property or former developments are not taken into consideration; (10) the existing roads meet City standards and we don't prevent development off of those roads anymore than we prevent it anywhere else in the City; (11) sidewalks are required as part of this project but there is no requirement to make off-site improvements; (12) the Fire Department and Water Department both evaluate what is the necessary amount of water pressure to serve the project; and (13) the existing City of Asheville waster system in the immediate vicinity of the subject project does not have capacity to satisfy the project's fire flow requirements - fire protection will be provided via an existing private fire line that originates on Swannanoa River Road and currently serves the Kenilworth Apartments.

City Attorney Oast said that several references have been made to previous reviews and/or denials; but cautioned the Commissioners that those are for other projects and the Commission's consideration needs to be confined to this project.

In response to comments made during the public hearing, Mr. Moore said that the memorandum produced by Mattern & Craig on July 11, 2011, said there were no substantial

changes between the 50-unit multi-family project and the current project. Therefore, he was comfortable in accepting that. He does not expect any changes, but if it is the Commissioners wish, he can ask that be updated. Based on this memorandum, sealed by a Professional Engineer, the stopping distance question is answered. The suggestion that the driveway be moved 10 feet has been responded to and that satisfies the conditions listed in the memorandum. In addition, he explained why he felt the angle of the driveway has also been addressed in the report.

In response to Chairman Cannady regarding the roadway width, Mr. Moore said that we allow on-street parking on 17-foot wide roadways, with the understanding that a parked car takes up about 7 feet. A 10-foot wide open path is what the emergency vehicles require to get through. If the roadway drops below 16 feet, then we post the road for no parking on either side.

When Vice-Chairman Goldstein asked why two points of access was not required, Mr. Moore said that for a 50-unit complex, there is no requirement for two points of access. For 50 units, based on trip generation numbers (45 vehicles in the peak hour), one access should be able to handle that.

When Mr. Minicozzi asked if the developer held a neighborhood meeting, Ms. Tuch responded that meeting is only a recommendation and not a requirement. Mr. Holman said that there has been an abundance of communication with the neighbors between the different projects. Mr. Frank Howington, applicant, said that he invited the board of the KRA to the area and showed them where the building would be. He offered to move the building away from the lower part of Finalee. He also offered many other things to help the area, such as a conservation easement on a larger tract. In addition, he offered to make improvements to the intersection of Swannanoa River Road and Caledonia Road. He said that he has spoken with the neighborhood a great deal and feels he has been very generous in his offers.

In rebuttal, Ms. Brison said that she has confirmed, with the Vice-President of the KRA, that there has been no meeting with the neighborhood about this project. There has been a number of communications back and forth in an effort to try to decide on a settlement for all of the issues, including all of the pending lawsuits. She said there is a much bigger tract of land that Mr. Howington owns for other access points. She could not locate the turnaround for large vehicles on the information she had. She reiterated the geotechnical analysis was done in 2010 in a different location for a 100-unit apartment project. She said it's the Commissioners' responsibility to make sure that there is compliance with these technical standards and they cannot do that because they don't have the Asheville Standards & Specifications Manual before them. She felt that the Mattern & Craig study is defective because it does not comply with the Asheville Standards & Specifications Manual. Without that study, the Commission does not have enough information to show technical compliance. She said that if the standard in making a decision is does this meet the technical standards, it's about does it or does it not meet those standards, not "appears to have the ability to comply through minor revisions and clarifications, with variances and modifications receiving review by the appropriate boards and commissions." She has not heard evidence of what variances or medications are required and shouldn't that step have been followed before taking it before the Commission. She requested the Commission deny this project because it does not meet technical requirements. If the Commission feels they need to look at the reports, she urged them to continue this matter.

At 8:06 p.m., Chairman Cannady closed the public hearing.

Vice-Chairman Goldstein said that the Commission recommends approval of projects, subject to conditions, all the time. Their recommendation is given based on the fact that it's reasonable that the developer can meet those conditions. Ms. Tuch said that no permits get issued as a result of this decision. Revised plans, revised letters, clarifications, etc. will be necessary from whomever staff thinks is necessary to demonstrate full compliance. Full compliance will have to be addressed before any permits are issued. That is the standard

practice for all technical reviews. City Attorney Oast said the Code says that "if the site plan receives conditional approval, the applicant shall revise the plan based upon the conditions of approval and re-submit it. The revised plans shall be reviewed by the Planning & Development Director and if it meets all the approval conditions, the site plan shall be considered approved."

Planning & Development Director Judy Daniel said that these rules are set up not expecting the Planning & Zoning Commission to be technical experts. The Commission is a citizen board and you are here in a role of citizens of the community. The Commission is not expected to understand technical recommendations made by the Fire Marshal, Building Safety Inspector, etc. They have their own technical expertise. The Commission can ask for technical staff to be present at a meeting and ask questions. Since there were questions about transportation on this project, the City's Traffic Engineer was asked to be present. It is not required for the Commission to have full technical knowledge and the general expectation is that the Commission would rely on the technical expertise of City staff.

Ms. Bernstein responded to Ms. Mathews when she asked how is open space calculated.

Vice-Chairman Goldstein noted he had a long list of concerns but staff responded to those concerns. In terms of what the Commission's limited role is for Level II projects, which is to see whether the project complies with the requirements of the zoning ordinance and other development codes of the UDO, he would make a motion to recommend approval.

Based on the above findings and the analysis provided in the report, Vice-Chairman Goldstein moved to recommend approval of the site plan for the project identified as Caledonia Apartments located at 77 Finalee Avenue, for the construction of a 50 unit apartment building, subject to the project complying with all the conditions outlined in the TRC staff report. This motion was seconded by Chairman Cannady.

Ms. Shriner's biggest concern was only one entrance; however, she understood that technically the project meets the standards. She felt that the Commissioners listen to the neighborhood concerns, the responses addressed by City staff, yet she was still frustrated that she must trust to make sure those standards have been met.

Ms. Carter's concern, outside the technical standards, is how can the Commissions plan for the community long-term.

Chairman Cannady said the Commissioners also have the option to continue this meeting. Ms. Tuch said that if the meeting is continued, it would be helpful to know specifically what technical standards do we need more information on. City Attorney Oast also noted that if the project fails, the Commission must identify what technical standards have failed to be met.

Mr. Minicozzi felt the Commissioners are very constrained in what their role is and would like to discuss, after the conclusion of this matter, on how the Commission can be active on bigger issues in the community. He understood the frustration on both sides.

If the matter is continued, some items the Commission would like to see is updated letters from the geotechnical analysis and Mattern & Craig study, more definitive answers from TRC departments, and coordinated information on each of the site plan pages.

City Attorney Oast said that unless the Commissioners have reasons to think that staff is wrong in its assessment of compliance with technical standards, they must base their vote on that analysis.

The motion made by Vice-Chairman Goldstein and seconded by Chairman Cannady by a 5-1 vote, with Ms. Mathews voting "no" (Mr. Smith was recused).



### **Other Business**

Chairman Cannady announced the next meeting on November 7, 2012, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

There was discussion, initiated by Mr. Minicozzi, on how the Commission can be active on bigger issues in the community, including the inconsistent zoning in Kenilworth and allowing proper scale of development in that area that is consistent with the topography. Ms. Daniel said that City Council has instructed the Planning staff to initiate a zoning study of this area. In addition, a new Neighborhood Advisory Committee has been formed and it would be appropriate for neighborhood representatives meet with that Committee.

### **Adjournment**

At 8:51 p.m., Mr. Minicozzi moved to adjourn the meeting. This motion was seconded by Vice-Chairman Goldstein and carried on a 6-0 vote.